HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL No.2629 OF 2005

Between:

K. Venkatarathnamma, W/o. K.A. Muni Rathnam,

R/o. Adarshnagar Colony, A.K. Nagar post,

Nellore District.

.. Appellant

AND

M/s. Modi Stone Crushers, Proprietary Concern

Rep. by its Prop. M. Prasada Rao, S/o. Ramaiah,

R/o.1/422, M.V. Nagar Guduru, Nellore District

& 3 others

.. Respondents

::JUDGMENT::

-

Counsel for the Appellant : Mrs. N. Shoba

Counsel for Respondent No.1 : Mr. C.V.R. Rudra Prasad

Counsel for Respondents 2 to 4 : G.P. for Industries & Commerce.

-

January 04, 2006

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated
19-09-2005 passed by the learned Single Judge whereby he dismissed W.V.M.P. Nos.2513, 2514, 3630 and 3631 of 2004 filed by the appellant for vacating interim orders dated
9-1-2004 and 27-9-2004 passed in W.P.M.P.No.26360 of 2003 and W.P.M.P.No.3239 of 2004 respectively (in Writ Petition No.21095 of 2003).

In the writ petition filed by it, respondent No.1 M/s.Modi Stone Crushers prayed for quashing communication dated 31-7-2003 vide which Assistant Director of Mines and Geology, Nellore rejected its application for issuance of despatch permit. According to respondent No.1, while disposing of the appeal filed by it against the order of Deputy Director, Mines and Geology determining the lease, Director of Mines and Geology remanded the case to the authority concerned and in that view of the matter, it was entitled to operate the mines. Along with the writ petition, respondent No.1 filed W.P.M.P.No.26360 of 2003 for being allowed to operate the mines. The learned Single Judge accepted the prayer of respondent No.1 and passed interim order dated 9-1-2004. Thereafter, respondent No.1 filed W.P.M.P.No.3239 of 2004 for issuance of a direction to the official respondents to grant despatch permit. That application was allowed by the learned Single Judge on
27-9-2004 and the following order was passed:

> "Having regard to the interim orders already granted, I do not find any impediment to grant interim orders as sought for in this application.
>
> No counter is filed.
>
> There shall be interim direction."

The appellant filed W.V.M.P.No.3631 and 3630 of 2004 for vacating interim orders passed in W.P.M.P.No.21095 of 2003 and W.P.M.P.No.3239 of 2004. Likewise, the Director of Mines and Gelology also filed W.V.M.P.Nos.2514 and 2513 of 2004 for vacating interim orders dated 9-1-2004 and
29-7-2004 passed by the learned Single Judge.

After hearing the counsel for the parties, the learned Single Judge dismissed all the vacate petitions.

Smt. N. Shoba, learned counsel for the appellant invited our attention to order dated 5-4-2004 passed by the learned Single Judge in Writ Petition No.5806 of 2004 whereby a direction was given to Deputy Director, Mines and Geology to decide the representation made by the appellant against the grant of lease in favour of respondent No.1 and argued that on one hand the application made by her client is not being decided in terms of order dated 4-12-2002 passed by the Director of Mines and Geology, and order passed by the learned Single Judge in Writ Petition No.5806 of 2004, and, on the other hand, respondent No.1 is continuously operating the mines. She submitted that if the interim orders passed by the learned Single Judge are not vacated, her client would suffer irreparable injury.

Though the argument of the learned counsel appears attractive, but on a closure scrutiny, we do not find any substance in it. A reading of order dated 14-12-2002 passed by the Director of Mines and Geology makes it clear that the permission granted to respondent No.1 for operating the quarries had not been annulled. This appears to be the reason why, the learned Single Judge has thought it proper to entertain the prayer made on behalf of respondent No.1 for operating the mines and then accept its prayer for issuance of despatch permits. On the strength of the interim order passed by the learned Single Judge, respondent No.1 has been operating the mines for last over one year. Therefore, at this stage, it will not be just and proper to vacate the interim order. If the appellant succeeds before the learned Single Judge or before other appropriate Forum, then he will be entitled to make a prayer for grant of lease. If, on the other hand, the appellant fails before the learned Single Judge or before other appropriate Forum, and in the meantime respondent No.1 is restrained from carrying mining operations, the latter is bound to suffer irreparable injury.

In the premise aforesaid, we do not find any valid ground or justification to nullify the order of the learned Single Judge whereby he refused to entertain the appellant's prayer for vacating the interim orders.

However, we find substance in the grievance of the learned counsel that

the application filed by her client is not being decided by the competent authority despite the direction given by this Court. In our view, the authority concerned is duty bound to obey the mandate of the order of this Court and decide the application of the appellant. Therefore, even though we have not been felt persuaded to vacate the interim orders passed by the learned Single Judge in favour of respondent No.1, we direct Deputy Director of Mines and Geology, Guntur District, to pass appropriate order on the appellant's application within a period of 15 days from today.

Subject to the above direction, the appeal is dismissed.

Learned Government Pleader for Mines and Geology should telephonically communicate this direction to the Deputy Director concerned.

G.S. SINGHVI, C.J.

Date:04-01-2006

G. BHAVANI PRASAD, J

PV / svs